

11,1955

~~PC 27562~~

UNIVERSITY OF LONDON
W.C.1.

No. 13 of 1954. -3 JUL 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

ON APPEAL

13572

FROM THE COURT OF APPEAL FOR EASTERN AFRICA.

BETWEEN

M. TAKIM & COMPANY . . . (Plaintiffs) *Appellants*

AND

FAZAL KASSAM VELJI . . . (Defendant) *Respondent*.

Case for the Respondent.

RECORD.

- 10 1. This is an appeal from a Decree, dated the 1st November, 1952, p. 27.
of the Court of Appeal for Eastern Africa (Nihill, P., Worley, V. P., and
Murphy, Acting C.J.) allowing an appeal from a judgment of His Britannic
Majesty's High Court for Zanzibar given on the 28th November, 1951, by
Gray, C.J., in favour of the Plaintiffs, who are the Appellants in these
proceedings.
- 20 2. The claim of the Appellants in their Plaint before the High Court pp. 1-2.
of Zanzibar was for damages for breach of a contract in writing dated the
20th June, 1950, for the sale and delivery by the Respondent to the
Appellants of 20,000 lb. of fair quality cloves at a price of Shs. 95/- per
100 lb. upon the terms contained in a document in the Gujarati language
which was signed by one Mohamed Saleh Bhaloo, a broker, and by
the Respondent and on behalf of the Appellants. An English translation
of the said document, marked "A," was annexed to the Plaint and bore pp. 3-4.
the heading "Local Contract Note."
- 30 3. The Respondent by his Amended Defence alleged (*inter alia*) pp. 6-7.
that the document referred to in the preceding paragraph was not admissible
in evidence on the ground that it was not duly stamped; and at the trial
it was objected and contended on behalf of the Respondent that the said p. 9, ll. 34-35.
document was inadmissible in evidence for the reason that it was not p. 14, ll. 10-13.
stamped in accordance with the provisions of Article 41 of the First Schedule
to the Zanzibar Stamp Decree (No. 5 of 1940).

4. The following statutory provisions are or may be relevant to this appeal :—

STAMP DECREE.

Section 2.—In this Decree, unless the context requires—

* * * * *

(10) “duly stamped,” as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in the Protectorate ;

(11) “executed ” and “execution ” used with reference to 10 instruments, mean “signed ” and “signature ” ;

* * * * *

(13) “instrument ” includes every document by which any right or liability is or purports to be, created, transferred, limited, extended, extinguished or recorded ;

* * * * *

Section 4.—Every instrument described in the First Schedule hereto should, unless expressly exempted therefrom by this Decree. be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor—

(a) if it be executed in the Protectorate ; or,

(b) if, being executed out of the Protectorate, it relates to any 20 property situated therein or to any matter or thing to be performed or done therein.

* * * * *

Section 6.—Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Decree.

Section 7.—Subject to the provisions of Section 6 an instrument so framed as to come within two or more of the descriptions in the First Schedule hereto shall, where the duties chargeable thereunder 30 are different, be chargeable only with the highest of such duties.

* * * * *

Section 19.—All instruments chargeable with duty and executed by any person in the Protectorate shall be stamped within thirty days of execution :

Provided that any instrument chargeable with duty of ten cents or twenty cents or promissory notes and bills of exchange shall be stamped at or before the time of execution, or the date of the instrument whichever shall be the earlier.

* * * * *

Section 39.—No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by 40

law or consent of parties authority to receive the evidence or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped ;

Provided that—

- (a) any such instrument not being an instrument chargeable with duty of ten cents or twenty cents only (other than a cheque) or a bill of exchange (other than a bill of exchange presented for acceptance, accepted or payable elsewhere than in the Protectorate) or a promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of twenty shillings, or, when ten times the amount of the proper duty or deficient portion thereof exceeds twenty shillings, of a sum equal to ten times such duty or portion.

* * * * *

FIRST SCHEDULE.

STAMP DUTY ON INSTRUMENTS.

| <i>Description of Instrument.</i> | <i>Proper Stamp Duty.</i> |
|--|---------------------------|
| * * * * * | |
| 5. Agreement or Memorandum of an Agreement— | |
| (A) if relating to the sale of a bill of exchange ; | Twenty cents. |
| (B) if relating to the sale of a Government security, or share in an incorporated company or other body corporate ; | Twenty cents. |
| (C) if not otherwise provided for. | One Shilling. |
| Exemptions. | |
| (1) Agreement or Memorandum of an Agreement— | |
| (A) for or relating to the sale of goods or merchandise exclusively, not being a Note or Memorandum chargeable under No. 41. | |
| * * * * * | |
| 41. Note or Memorandum, sent by a Broker or Agent to his Principal intimating the purchase or sale on account of such Principal— | |
| (A) of any goods of the amount or value of forty shillings or over. | Twenty cents. |
| * * * * * | |

ZANZIBAR EVIDENCE DECREE.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

92. When the terms of any such contract, grant or other disposition or property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms. 10

5. At the trial before Gray, C.J., in the High Court at Zanzibar the said Bhaloo gave evidence, on behalf of the Appellants, that after he had made an oral bargain between the Appellants and Respondent, whom he had interviewed separately, he subsequently wrote out and signed the said document at his house in the evening and that the said document was not stamped then nor when, on the following day, he again saw the Appellants and the Respondent separately and obtained their respective signatures to the said document. Evidence was given by one Akbar Rashid Nathani, a Partner in Appellants' firm, that the said document was stamped after it had been delivered to the Appellants bearing the signature of the said Bhaloo and of the Respondent and after it had been signed on behalf of the Appellants; he also gave evidence that the Respondent had failed to deliver the cloves and of the alleged damage thereby sustained by the Appellants. 20

p. 11, ll. 1-17
and ll. 42-48.

p. 9, ll. 27-32.

p. 10, ll. 1-10.

pp. 14-18.

6. In the course of his judgment the learned Judge said :— 30

“ On the evidence before me I am of opinion that the document in question is not the record by the Broker of an effectual sale and purchase or of an effectual contract of sale and purchase and that consequently it does not come within the purview of the Article 41 in the First Schedule of the Stamp Decree 1940, and is therefore not liable to the stamp duty therein set out. Consequently it can be received in evidence by me.”

p. 18, ll. 37-42.

There being no other defence to the claim, the learned Judge found for the Appellants and decreed that the Respondent pay to the Appellants the sum of Shs. 10,048/25 as damages, interest and costs. 40

p. 19.

7. The Respondent on the 15th January, 1952, lodged a Memorandum of Appeal to the Court of Appeal for Eastern Africa, the appeal was heard on the 27th October, 1952, and judgment was delivered on the 1st November, 1952. The learned President, in the course of his judgment, in which the other members of the Court concurred, said :—

p. 20.

pp. 23-26.

“ Where a merchant has something to sell and employs a broker to find a buyer on certain terms and this is done, it seems

p. 25, ll. 30-38.

to me that the note or memorandum from the broker intimating that it has been done can only be regarded as a document which comes within the ambit of Article 41. If I am right in this, then it is an instrument upon which, if the value of the goods sold amount to more than forty shillings, a stamp duty of 20 cents is chargeable, and it is a requirement of law that the stamp should be affixed at or before the time of execution, or the date of the instrument, whichever shall be the earlier.

* * * * *

10 A broker's note is executed at the moment of signature by the broker. The document Exhibit 1 is dated 20th June, 1950, but it is not in dispute that the broker prepared his note and signed it on the evening before. Let it be accepted that it was stamped by the buyers clerk on the day following, this was too late to satisfy the requirements of the proviso to section 19 of the Stamp Decree." p. 25, ll. 44-49. p. 33.

8. In the result, the appeal was allowed with costs and the judgment of the High Court of Zanzibar was set aside, and judgment with costs for the Respondent substituted therefor. p. 27.

9. The Respondent respectfully submits that the Decree of the Court of Appeal for Eastern Africa dated the 1st November, 1952, is right and ought to be affirmed and that this appeal should be dismissed with costs, for the following, amongst other p. 27.

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REASONS

- (1) BECAUSE the document sued upon was a note or memorandum within the meaning of Article 41 (a) of the First Schedule of the Zanzibar Stamp Decree 1940.
- (2) BECAUSE the said document was not, in accordance with the said Decree, stamped at or before the time of execution.
- 30 (3) BECAUSE the said document was not admissible in evidence unless, in accordance with the said Decree, it had been stamped at or before the time of execution.
- (4) BECAUSE of the other reasons given by the Court of Appeal for Eastern Africa.

LEONARD CAPLAN.

In the Privy Council.

ON APPEAL

*from the Court of Appeal for Eastern
Africa.*

BETWEEN

M. TAKIM & COMPANY

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AND

FAZAL KASSAM VELJI

(Defendant) Respondent.

Case for the Respondent

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